

In the United States Court of Federal Claims

OFFICE OF SPECIAL MASTERS

No. 15-1375V

Filed: September 14, 2016

UNPUBLISHED

DIANNE GAIL STROBEL,

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Petitioner,

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v.

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SECRETARY OF HEALTH

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AND HUMAN SERVICES,

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Respondent.

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Leah VaSahnja Durant, Law Offices of Leah V. Durant, PLLC, Washington, DC, for petitioner.

Adriana Ruth Teitel, U.S. Department of Justice, Washington, DC, for respondent.

DECISION AWARDING DAMAGES¹

Dorsey, Chief Special Master:

On November 13, 2015, petitioner filed a petition for compensation under the National Vaccine Injury Compensation Program, 42 U.S.C. §300aa-10, *et seq.*,² (the “Vaccine Act”). Petitioner alleges that she suffered a shoulder injury related to vaccine administration (“SIRVA”) as a result of her November 19, 2014 influenza (“flu”) vaccination. Petition at 1. The case was assigned to the Special Processing Unit of the Office of Special Masters.

On January 29, 2016, a ruling on entitlement was issued, finding petitioner entitled to compensation for SIRVA. On September 12, 2016, respondent filed a proffer on award of compensation (“Proffer”) indicating that petitioner should be awarded compensation of \$8,250.00 representing past and future unreimbursable expenses, and

¹ Because this unpublished decision contains a reasoned explanation for the action in this case, the undersigned intends to post it on the United States Court of Federal Claims' website, in accordance with the E-Government Act of 2002. 44 U.S.C. § 3501 note (2012) (Federal Management and Promotion of Electronic Government Services). In accordance with Vaccine Rule 18(b), petitioner has 14 days to identify and move to redact medical or other information, the disclosure of which would constitute an unwarranted invasion of privacy. If, upon review, the undersigned agrees that the identified material fits within this definition, the undersigned will redact such material from public access.

² National Childhood Vaccine Injury Act of 1986, Pub. L. No. 99-660, 100 Stat. 3755. Hereinafter, for ease of citation, all “§” references to the Vaccine Act will be to the pertinent subparagraph of 42 U.S.C. § 300aa (2012).

\$184,750.00 representing actual and projected pain and suffering. Proffer at 1. In the Proffer, respondent represented that petitioner agrees with the proffered award. Based on the record as a whole, the undersigned finds that petitioner is entitled to an award as stated in the Proffer.

Pursuant to the terms stated in the attached Proffer, **the undersigned awards petitioner a lump sum payment of \$193,000.00 which represents compensation for past and future unreimbursable expenses (\$8,250.00), and actual and projected pain and suffering (\$184,750.00), in the form of a check payable to petitioner, Dianne Gail Strobel.** This amount represents compensation for all damages that would be available under § 300aa-15(a).

The clerk of the court is directed to enter judgment in accordance with this decision.³

IT IS SO ORDERED.

s/Nora Beth Dorsey
Nora Beth Dorsey
Chief Special Master

³ Pursuant to Vaccine Rule 11(a), entry of judgment can be expedited by the parties' joint filing of notice renouncing the right to seek review.

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DIANNE GAIL STROBEL,

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SECRETARY OF HEALTH AND
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No. 15-1375V
Chief Special Master Dorsey
ECF

RESPONDENT’S PROFFER ON AWARD OF COMPENSATION

I. Compensation for Vaccine Injury-Related Items

On January 28, 2016, respondent filed a Rule 4(c) Report conceding that petitioner was entitled to vaccine compensation for her Shoulder Injury Related to Vaccine Administration (“SIRVA”) injury.

A. Unreimbursable Expenses

Evidence supplied by petitioner documents her expenditure of past unreimbursable expenses related to her SIRVA injury. Additionally, based upon the evidence of record, petitioner will require future care for her SIRVA injury. Respondent proffers that petitioner should be awarded \$8,250.00 for her past and future unreimbursable expenses. Petitioner agrees.

B. Pain and Suffering

Respondent proffers that petitioner should be awarded \$184,750.00 in actual and projected pain and suffering. This amount reflects that the award for projected pain and suffering has been reduced to net present value. *See* 42 U.S.C. 300-15(a)(4). Petitioner agrees.

II. Form of the Award

Respondent recommends that the compensation provided to petitioner should be made through a lump sum payment as described below, and requests that the special master's decision and the Court's judgment award the following:¹

- A. A lump sum payment of \$193,000.00 in the form of a check payable to petitioner, Dianne Gail Strobel. This amount accounts for all elements of compensation under 42 U.S.C. § 300aa-15(a) to which petitioner would be entitled.

Petitioner is a competent adult. Evidence of guardianship is not required in this case.

Respectfully submitted,

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/s/ Adriana Teitel
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Dated: September 12, 2016

¹ Should petitioner die prior to entry of judgment, respondent reserves the right to move the Court for appropriate relief. In particular, respondent would oppose any award for future medical expenses, future pain and suffering, and future lost wages.